

**BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In the Matter of the: Bradley Moore et al.  
Application of

Serial No. : 10/821,284  
Filed : April 9, 2004  
Entitled : **INSTRUMENTS AND METHODS FOR  
MINIMALLY INVASIVE SPINE SURGERY**  
Docket No. : DEP5292USNP

Confirmation No.: 1111  
Group Art Unit: 3733  
Examiner: Mary C. Hoffman

MS Appeal Brief - Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

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December 4, 2009  
(Date of Transmission)

\_\_\_\_\_  
David A. Lane  
(Name of applicant, assignee, or Registered Representative)

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/Amy Pelletier /  
(Signature of person filing)

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December 4, 2009  
(Date of Signature)

**Response to Notification of Non-Compliant Appeal Brief**

In response to the Notification of Non-Compliant Appeal Brief dated November 10, 2009, Applicant submits the following replacement sections, Section III and Section V, to the Appeal Brief filed on October 23, 2009, in connection with the above-referenced patent application. The replacement sections address the objections set forth in the Notification of Non-Compliant Appeal Brief. Replacement Section III includes a reference to cancelled claims 1-36. Replacement Section V replaces the reference to claim 1 with claim 37.

### **III. STATUS OF CLAIMS**

Claims 37-47 are currently pending in the present application, Serial Number 10/821,284. Claims 1-36 have been canceled. Accordingly, claims 37-47 are subject to appeal.

### **V. SUMMARY OF CLAIMED SUBJECT MATTER**

Independent claim 37 recites a minimally invasive surgical method. The method includes making a first incision in a patient. *See, e.g.*, p. 5, lines 29-33 (para. [22]) and p. 6, lines 1-7 (para. [22]). The method also includes inserting a retractor having a plurality of expandable retractor blades into the first incision and expanding the retractor by separating the retractor blades. *See, e.g.*, p. 6, lines 21-30 (para. [24]). The method also includes advancing a first anchor through the expanded retractor to a first anchor site on a first vertebra and advancing a second anchor through the expanded retractor to a second anchor site on a second vertebra adjacent the first vertebra. *See, e.g.*, p. 5, lines 18-33 (paras. [21], [22]) and p. 6, lines 1-7 (para. [22]). The method also includes making a percutaneous incision in the patient and advancing a third anchor through the percutaneous incision to a third anchor site on a third vertebra adjacent one of the first and second vertebra. *See, e.g.*, p. 7, lines 16-24 (para. [26]). The method also includes positioning a first end of a spinal rod in the expanded retractor, advancing the first end of the spinal rod subcutaneously to the third anchor, and coupling the spinal rod to the first anchor, the second anchor, and the third anchor. *See, e.g.*, p. 9, lines 2-13 (para. [29]).

Independent claim 47 recites a minimally invasive surgical method. The method includes implanting a first anchor and second anchor in a first vertebra and a second vertebra, respectively, through an expanded surgical retractor positioned in a first incision. *See, e.g.*, p. 5, lines 18-33 (paras. [21], [22]) and p. 6, lines 1-7 and lines 21-23, (paras. [22], [24]). The method also includes percutaneously positioning a third anchor in a third vertebra adjacent one of the first vertebra and the second vertebra through a percutaneous incision distinct from the first incision. *See, e.g.*, p. 7, lines 16-24 (para. [26]). The method also includes advancing the first end of a spinal rod subcutaneously from the first incision to the third anchor and coupling the spinal rod to the first anchor, the second anchor, and the third anchor. *See, e.g.*, p. 9, lines 2-13 (para. [29]).

***Conclusion***

If there are any further issues with respect to the October 23, 2009, Appeal Brief, please contact the undersigned.

Respectfully submitted,

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/David A. Lane, Jr./  
David A. Lane, Jr., Reg. No. 39,261  
Attorney for Appellant  
Johnson & Johnson  
One Johnson & Johnson Plaza  
New Brunswick, NJ 08933-7003  
Customer No: 000027777  
Telephone: (508) 880-8488  
Facsimile : (508) 828-3789